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SEP 28 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 628

EDWARD J. KAZUBOWSKI,

Petitioner,

vs,

BETTY DOLAR KAZUBOWSKI,

Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

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This cause should not be reviewed by this Court because the allegations of want of due process in the Trial Court and the Illinois Supreme Court are unfounded. The petitioner has failed to present his points with accuracy, brevity and clearness, and the case has no public importance.

I.

MOST OF THE QUESTIONS RAISED HAVE BEEN PRESENTED BEFORE IN THIS COURT.

All of the questions presented arise from an ordinary divorce case in the Circuit Court for Henry County, Illinois, in which a decree for divorce was entered on June 13, 1966, and a property settlement decree entered on August 31, 1966 (Appendix P and R, Pages 62a and 69a of Addendum to Appendix to Petition). Defendant Edward J. Kazubowski immediately violated the property settlement decree and all of the subsequent litigation arises from his objections to the divorce decrees and the enforcement proceedings. Many of these objections were presented in an appeal to the Appellate Court of Illinois in case No. 66-101 in which an opinion was filed on March 14, 1968 dismissing certain appeals and affirming all others (Appendix D, page 17a).

Defendant filed a petition for leave to appeal to the Supreme Court of Illinois as a matter of right, claiming constitutional objections, and his petition was denied on September 23, 1968. Review of the Appellate Court decision was sought in case No. 960 in this court by a writ of certiorari which was denied on March 3, 1969.

Soon thereafter the mandate of the Appellate Court of Illinois affirming the 1966 divorce decrees and several enforcement orders was filed in the trial court and enforcement proceedings began again against the defendant.

Thereafter defendant appealed directly from various enforcement orders to the Supreme Court of Illinois, again alleging constitutional objections, and the opinion was filed March 24, 1970, dismissing the appeals from

two orders and affirming four other orders, all considered in consolidated appeals under numbers 42321, 42415, and 42416 (see Appendix E, page 27a).

Petitioner states the record now presents fifteen questions for this court (Petition, page 9). The first eleven questions apparently relate to the divorce decrees and enforcement proceedings in 1966, all of which were subject to review in the Appellate Court of Illinois in the appeal in which the opinion was filed in 1968 (Appendix D, page 17a).

The remaining four questions presented apparently relate to the subsequent enforcement proceedings in the trial court which were considered in the direct appeal to the Supreme Court of Illinois where an opinion was filed March 24, 1970.

II.

THERE WERE NO CONSTITUTIONAL QUESTIONS RAISED IN THE 1969 ENFORCEMENT PROCEEDINGS.

Petitioner here seeks a review of the entire case from the beginning but the Supreme Court of Illinois in its opinion filed March 24, 1970 held that no question which was raised or could have been raised in the prior appeal on the merits can be urged on a subsequent appeal and those not raised are considered waived, including constitutional questions (Appendix E, page 35a).

The Supreme Court of Illinois then considered the 1969 enforcement proceedings shown in the record on appeal and decided the questions raised therein as follows:

1. The issuance of a contempt mittimus on March 24, 1969, based on an order to the clerk to issue the mittimus

entered on September 15, 1966, which had been affirmed on appeal, was affirmed, although the issuance of the mittimus by the clerk was mandatory and did not involve the exercise of any discretion.

2. The order of March 25, 1969, releasing defendant from custody and reciting his payment of $14,000 on account of various prior orders of the court was affirmed.

3. An order entered on April 28, 1969, allowing supplemental attorneys' fees for services of plaintiff's attorneys during the appeals was affirmed.

4. An order entered on April 28, 1969 by the trial court on its own motion, directing the clerk to file no further pleadings for the defendant except in connection with the pending or future appeals was found not final or appealable and the appeal was dismissed.

5. An order entered on April 28, 1969, directing defendant to show cause why he should not be punished for contempt for his refusal to pay equitable alimony pursuant to the order entered September 23, 1966, affirmed on appeal, was held not a final and appealable order and the appeal was dismissed.

6. An order entered May 2, 1969, finding defendant in contempt for failure to pay alimony ordered by the court on September 23, 1966 was affirmed.

The opinion of the court (Appendix E, page 27a) shows that the Supreme Court of Illinois found no constitutional question was raised. Respondent here contends that on this record there is no federal question for consideration by this court. 32 Am. Jur. 2d 731, Federal Practice & Procedure, Sec. 261.

III.

PETITIONER SHOWS NO NEED FOR REVIEW IN THIS COURT.

The many charges in the petition against the Illinois courts amount to a claim that in this case the Illinois courts have departed from the accepted course of judicial proceedings, but the facts in the record show there is no basis for this charge. Everything in the record indicates a persistent refusal by the petitioner, Edward J. Kazubowksi, to comply with the divorce decrees and subsequent enforcement orders. There is no evidence that he is not able to comply with these orders. The record shows he has always been able to employ lawyers to represent him and that he or his lawyers have attended almost every one of the many hearings in the case since the filing of the complaint for divorce. There is no evidence in the record that the court has acted without notice to the petitioner, and his charges that he has been prevented or obstructed in presenting his views in the courts are entirely unfounded, as is indicated by the last opinion of the Supreme Court of Illinois reviewing the whole litigation.

Therefore this case has no public importance and should not be reviewed by this court.

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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